IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8333 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOKILABEN PRATAPSINH PALICHA

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 8333 of 2003

MR BIPIN P JASANI for Petitioner No. 1

MS.FALGUNI PATEL, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-4

RULE SERVED BY DS for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/02/2004

ORAL JUDGEMENT

The present petition is filed praying that the

impugned action of the respondents of not considering the previous services actually rendered by the petitioner between 24.06.1963 to 13.06.1973, be taken into consideration. According to the petitioner, aforesaid period is not taken into consideration while computing the total qualifying service for pension, which has resulted into financial loss to the petitioner as she is granted pension on shorter service than the one on which she should have been granted.

1.1 It is further prayed that the Court be pleased to declare that the petitioner is entitled and eligible to get all pensionary benefits for the services which she rendered during 24.06.1963 to 13.06.1973, for 4 years, 10 months and 4 days, entitling her to have added 5 years in the service, which is taken to be her qualifying pensionable service. Besides, it is prayed that the amount be ordered to be paid with compound interest at the rate of 21%. It is also prayed that, disciplinary action be taken against the respondent-District Education Officer for withholding the authorisation required by the pension authorities and finally respondent no.3 be directed to revise pension of the petitioner forthwith taking into consideration the service rendered between 24.06.1963 to 13.06.1973 and release all retiral benefits forthwith.

1.2 Mr.Jasani, the learned advocate for the petitioner submitted that despite service of process of rule issued by this Court on 09.09.2003, respondent no.1-Secretary, Education Department; respondent no.2-Commissioner of Higher Education; respondent no.3-Director of Pension & Provident Fund, Govt. of Gujarat; and respondent no.4-District Education Officer have chosen not to file any reply to the present petition. The learned advocate submitted that the authorities could not have fixed the pension ignoring the service rendered by her during 24.06.1963 to 13.06.1973, particularly in light of the contents of Government Resolution dated 02.08.1985, a copy of which is produced at Annexure 'Q' to this petition, wherein the Government in supersession of the relevant part of Govt. Resolution dated 21.12.1971 decided as under:

> "3. Government has carefully considered the request of the Federation and has decided that both the schemes should be put on the same footing. In partial modification, therefore, of para 7 of the Govt. Resolution dated the 21st December 1971 referred to above, Government is pleased to direct that in computing the length of

qualifying service for pension under this scheme, all previous service whether temporary, officiating or permanent in any institution where such service is treated as a qualifying service shall be taken into account. The period of break in such service will not be considered as qualifying service, i.e. actual service rendered in such institutions will be considered as qualifying service for purposes of pension under this scheme." (emphasis supplied)

2. Mr.Jasani, the learned advocate submitted that after the pension papers of the petitioner were submitted to the authorities, respondent no.3, Director of Pension & Provident Fund in particular, through respondent no.5-Principal, Jamkhambhaliya Nagarpalika Sanchalit Sheth Shri Damodar Sunderji Girls High School (the school in which the petitioner was last in service), without taking into consideration the relevant aspect of the matter wrote a letter dated 05.12.2000 to the District Education Officer, wherein attention was focussed only on the aspect of, 'non inclusion of pension option'. It appears that thereafter the papers were again submitted to the Director of Pension & Provident Fund by respondent nos.4 and 5 together on which respondent no.3-Director of Pension & Provident Fund wrote another letter dated 13.03.2001 to the District Education Officer wherein it was stated that objection no.1 regarding, 'inclusion of pension option' is not properly complied with. It was therefore, asked that the 'pension option' is not included in original and that the pension option dated 02.03.1979 submitted with the papers is not countersigned by the District Education Officer. In the said letter, in point no.2 it is stated that the pensionable service be calculated after taking into consideration the breaks in service in detail.

2.1 The grievance which is raised in this petition is that the service rendered during 24.06.1963 to 13.06.1973 is not taken into consideration. The authorities have issued an order dated 30.07.2001 whereby attention is focussed on the pension option dated 02.03.1979 which is not taken into consideration on the ground that it is not countersigned by the District Education Officer. However, it is stated that as and when the same is submitted, after it is duly countersigned by the District Education Officer, pension will be revised. It is also mentioned in the said letter/ order dated 30.07.2001 that actual qualifying service for pension be verified and thereafter same be indicated clearly. Thus, it appears that the authorities have not taken sufficient care to

take into consideration the real grievance of the petitioner. Besides, the authorities have chosen not to appear before the Court.

3. In view of the aforesaid discussion, the petition is partly allowed. Respondents no.3 & 4 are directed to take into consideration the facts of the case of the petitioner and decide the same in light of the contents of para 3 of the Government Resolution dated 02.08.1985 and pass necessary consequential orders immediately. Order shall be passed within six weeks from the date of receipt of the copy of this judgement and order. The order shall be passed setting out reasons for the same and the same shall be communicated to the petitioner by Registered Post Acknowledge Due letter. It is clarified that this order shall not affect the making of payment of pension already started to the petitioner.

4. The petition is partly allowed with the aforesaid directions. Rule is made absolute to the aforesaid extent only. No order as to costs. Direct service is permitted.

(Ravi R. Tripathi, J.)

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